

REMARKS

Applicants confirm the election of Group 1, claims 1-20.

Claim 1 has been rejected under 35 USC 112, second paragraph. This rejection is respectfully traversed and should be withdrawn in light of the amendment.

Claims 1-20 were rejected as being obvious over Jacobsen in view of Lykke and Hofmeister. This rejection is respectfully traversed.

Jacobsen discloses a multilayer structure having “at least 4 layers” as stated in the Abstract. A careful review of Jacobsen shows that Jacobsen does not disclose a multi-layer structure with “an EVOH layer *directly on* the metal-containing layer” as recited in claim 1.

Similarly, Lykke discloses a multilayer structure having 4 or more layers. The multilayer structure of Lykke has a polymer film substrate, an EVOH barrier layer on the polymer film substrate and metallization layer on the EVOH barrier layer. On the other hand, claim 1 recites, “A laminate film, comprising, *in this order*: a biaxially oriented polymer film substrate; a metal-containing layer; and an EVOH layer *directly on* the metal-containing layer.” [Emphasis added.] In short, the order of the EVOH barrier film and the metallization layer on a polymer film substrate of Lykke’s multilayer structure is *exactly opposite* to that of the claimed laminate film. Thus, Lykke does not disclose a multi-layer structure with “an EVOH layer *directly on* the metal-containing layer” as recited in claim 1.

Finally, Hofmeister also discloses a multilayer structure having multiple layer with *no* metallization layer. Thus, Hofmeister does not disclose a multi-layer structure with “an EVOH layer *directly on* the metal-containing layer” as recited in claim 1.

In short, the prior art references *as a whole* fail to disclose “an EVOH layer *directly on* the metal-containing layer” as recited in claim 1. Applicants respectfully submit that the Examiner should not read out the limitation “*directly on*” in claim 1 just the Federal Circuit in *Lewmar Marine*

Inc. v. Barient Inc. 827 F.2d 744, 3 USPQ2d 1776, *cert. denied*, 484 U.S. 1007 (Fed. Cir. 1988), explained that even the word “only” cannot be read out of a claim. “The claim limitation could possibly read on the American Eagle winch if the word ‘only’ did not appear in that clause. The word ‘only,’ however, is there and may not be read out of the claims.” *Id.* Similarly, in this case, the word “*directly on*” may *not* be read out of the claims.

In *Lewmar Marine*, the Federal Circuit interpreted “only” in an absolute sense because the claimed winch changed gears only upon reversal. The court then stated that “[w]hen claims 1 and 2 are properly interpreted, the [prior art] American Eagle winch does anticipate because shifting does not occur only upon crank reversal.” *Id.* Similarly, in the pending application when “an EVOH layer *directly on* the metal-containing layer” is properly interpreted, then it is quite apparent that the cited prior art does *not* disclose a laminate film with “an EVOH layer *directly on* the metal-containing layer” as recited in claim 1.

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing 361752002400.

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Respectfully submitted,

By 

Raj S. Dave

Registration No.: 42,465

MORRISON & FOERSTER LLP

1650 Tysons Blvd, Suite 300

McLean, Virginia 22102

(703) 760-7755 – Telephone

(703) 760-7777 - Facsimile